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November 6, 1991

HAND DELIVERY
Mr. Michael Towle, 3HW21
Remedial Project Manager
United States Environmental
Protection Agency - Region III
841 Chestnut Street
Philadelphia, PA 19107

Re: Comments on Proposed Plan for OU1, Raymark Superfund Site, Montgomery County, Pennsylvania

Dear Mr. Towle:

On July 19, 1991, the United States Environmental Protection Agency ("EPA") issued a proposed plan ("Proposed Plan") for remedial action at Operable Unit #1 ("OU1") of the Raymark Superfund Site in Hatboro, Pennsylvania. This firm represents Raymark Industries, Inc., and its affiliates, ("Raymark"). On August 19, 1991, I submitted comments on the Proposed Plan on Raymark's behalf for inclusion in the Administrative Record. In response to those comments, EPA reopened the comment period until November 6, 1991. Although Raymark continues to rely on its previous comments, Raymark now submits further comments on the Proposed Plan.

In 1988, EPA and Raymark entered into a consent decree ("Consent Decree") concerning liability for contamination arising from Raymark's former ownership of the site. A copy of the Consent Decree is attached to my August 19, 1991 comment letter as Exhibit A. Under the Consent Decree, Raymark and the current owner of the site, Penn Fasteners, Inc., agreed to finance the construction, maintenance and operation of air strippers on certain Hatboro municipal water supply wells. These strippers were designed to remove trichloroethene ("TCE") from the groundwater pumped from those wells. EPA covenanted not to sue

Raymark for further response costs until after issuance of a Final Record of Decision ("Final ROD"). Consent Decree, XV. A Final ROD has not yet been issued.

Also, upon consideration of the settlement embodied in the Consent Decree, the Honorable James T. Giles declared that the Consent Decree would bar EPA from recovering from Raymark costs incurred in response to known, predicted or reasonably inferable contamination at the site. Judge Giles stated:

> All parties have been aware and have negotiated with the knowledge that I would interpret an interim agreement not as a release, but as a present acknowledgement of adequate steps taken to deal with the conditions found by the United States and Hatboro at the site or that which could be reasonably inferred from that which was known or predicted . . . by the hydrogeologists and other experts of the Government.

Transcript of Hearing, p. 43 (emphasis added). A copy of the relevant portion of the transcript is attached as Exhibit B.

Based upon the foregoing, Raymark believes that neither EPA nor Hatboro, nor any other person or entity, may hold Raymark liable for costs incurred in further responding to conditions at the Raymark site which were known or predicted in 1988, or which could then have been reasonably inferred to exist. The condition cited in the Proposed Plan as the reason for the proposed remedial action is the alleged presence of TCE in the soil and bedrock above the water table. Raymark is not liable for the costs of responding to soil and bedrock contamination at the site because the existence of such contamination was known by EPA in 1988, or could have been "reasonably inferred from that which was known or predicted" about the site in 1988. EPA was aware of such contamination at the time it entered into the Consent Decree.

EPA has not discovered any conditions at the site not reasonably inferable from data EPA possessed in 1988. In fact, the principal data points on which EPA relies to prove that the Raymark site is a source of the TCE contamination in the groundwater date from 1986. It has been EPA's theory from the beginning that TCE is present in the soil and bedrock above the water table at the site. This assumption was the basis for the liability asserted against Raymark in 1985, when EPA claimed that TCE present in the soil and bedrock above the water table at the

site was contaminating the aquifer beneath the site and, ultimately, at the Hatboro wells.

EPA acknowledges that Hatboro suffers from a regional groundwater problem, to which Raymark is merely one alleged contributor. In 1988, possessed of the same qualitative data as it has now, EPA chose to remedy this problem not on-site, but at the Hatboro municipal water supply wells. This choice had several advantages over on-site remediation. The most significant of these advantages was the assurance that no contaminated groundwater would escape the on-site recovery systems and find its way untreated into the municipal water supply. Under the Consent Decree, EPA cannot now augment its remedy in the absence of changed conditions at the site. Because site conditions are unchanged, EPA is barred from recovering the costs of implementing the Proposed Plan from Raymark.

Notwithstanding that Raymark has entered into a final settlement with the EPA, out of an abundance of caution, Raymark now submits these comments on the Proposed Plan for inclusion in the Administrative Record.

By my letter to you dated September 17, 1990, Raymark submitted comments on the proposed plan for remediation of Operable Units #2 and #3 ("OU2" and "OU3") at the site. A number of Raymark's comments at that time are pertinent to EPA's consideration of the Proposed Plan. Therefore, Raymark hereby incorporates by reference my September 17, 1990 letter to you insofar as the concerns raised in that letter are relevant to EPA's consideration of the Proposed Plan for OU1.

The remedial investigation ("RI") conducted at the site for OU1 was inadequate. Table 1 of the Proposed Plan shows that a very small number of samples were taken during the RI. It is unclear from Table 1 when the 11 surface soil samples were taken. EPA took between 14 and 25 subsurface soil samples in the RI. (The number of subsurface soil samples is unclear from Table 1.) EPA took no samples from bedrock during the RI. By contrast, EPA relied upon data from over 70 samples collected in 1986, well before the Consent Decree. Only a few of the samples taken reflect the presence of contaminants. The inadequacy of the RI is demonstrated by the fact that, when conducting the baseline risk assessment ("BRA"), EPA was not able to develop "a 95% confidence level of the mean sample concentration . . . ." Proposed Plan, p. 9, AR301889; see also AR300832. The RI was also inadequate to determine background levels of TCE and other contaminants. See AR300942.

EPA's BRA was also defective in several critical ways. The BRA considered the threat from contaminated groundwater in evaluating the risk posed by the soil and bedrock contamination at the site. EPA states that the presence of TCE in the soil and bedrock would have a degrading effect on groundwater quality. EPA, however, has already selected a remedy to address groundwater contamination at the site in the ROD for OU3. This remedy was selected over the objection of commentors that groundwater at the site should not be treated until the TCE source above the water table had been located and addressed. EPA elected to proceed with groundwater remediation, and therefore must have concluded that the threat posed by groundwater at the site could be eliminated through the selected remedial alternative without addressing the contamination present above the water table. For this reason, the theoretical threat posed by groundwater at the site should not be considered again in the BRA for OU1. EPA has selected a different remedy to eliminate this threat independent of conditions above the water table.

A number of other erroneous and misleading assumptions mar the reliability of the BRA. First, the BRA was performed using the assumption that exposure would occur at the maximum levels detected at the site. Id. However, the concentrations of contaminants present at the site at the time of the RI are dramatically less than the concentrations detected at the site in 1986. See Proposed Plan, p. 4, AR301884. The BRA should be calculated using concentrations detected during the RI. Second, EPA made assumptions concerning future site use that have no basis in reality. EPA assumed that the site may be developed into residential housing, requiring soil disturbance and exposing residential populations to conditions at the site. This result could not only be easily prevented by institutional controls such as deed restrictions, but is in fact prevented by market forces. The site is far more valuable as a properly-zoned small industrial facility than it ever could be as a residential development.

Even with these erroneous assumptions, the BRA produced excess cancer risk levels in the 10^{-5} to 10^{-6} range, well within the permissible range of risk defined in the NCP. 40 C.F.R. § 300.430(e)(2)(i)(A)(2). The maximum excess cancer risk under current conditions is 3.8×10^{-5}. The maximum excess cancer risk, even hypothesizing residential use of the site, is an order of magnitude smaller than the maximum allowable risk under the NCP.

The feasibility study ("FS") for OU1 was also inadequate. EPA did not genuinely consider the No Action

Alternative as required by 40 C.F.R. § 300.430(e)(6). Nor did EPA consider a number of intermediate remedial alternatives such capping the site or excavating the surface soil hotspots. See 40 C.F.R. § 300.430(e)(3)(ii). Instead, EPA concludes that the No Action Alternative "is not protective of human health since long-term leaching of contamination to the ground water would continue." Proposed Plan, p. 18, AR301898. As noted above, EPA has already addressed risks posed by the groundwater under current soil and bedrock conditions, and the potential for contamination of the groundwater is not an appropriate consideration in evaluating remedial actions with respect to the soil and bedrock. In fact, the No Action Alternative is entirely adequate at this site, given the relatively high background concentrations of contamination in the Hatboro area. EPA has ignored this data by basing the FS on the assumption that "clean water flows onto the Site." AR300943. This assumption is known to be inaccurate.

It is understood that under normal circumstances EPA strives to reduce excess cancer risks to 10^{-6} range. See 40 C.F.R. § 300.430(e)(2)(i)(A)(2). However, this result would be unachievable at the site given the high background conditions. The BRA produced the following results:

> The majority of the Site's potential carcinogenic risk is posed by exposure to PAH, arsenic and beryllium contamination in the surface soil. The degree of PAH contamination on the Site is slightly higher than the background level of PAHs. The degree of arsenic and beryllium contamination on the Site is not higher than background levels. The majority of the non-carcinogenic risk posed by the Site is due to cadmium in the surface soil. The level of cadmium in the surface soil is not statistically different than background levels, but appears to be elevated in certain areas of the Site. The elevated HI indicated in the toddler exposure scenario above is due in part to one sample which contained high levels of nickel in addition to cadmium.
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> EPA strives to reduce the carcinogenic risk posed by a Superfund Site to within an excess cancer risk range of one times 1 x 10^{-4} to

> 1×10^{-6} . . . and to reduce the non-carcinogenic risk to a HI less than one. The excess cancer risk posed by surface soil is within EPA's acceptable risk range. The HI is less than one for all exposures scenarios except ingestion by a future resident toddler. EPA's ground water risk calculations indicate that the potential carcinogenic risk posed by contaminated ground spacewater at the Raymark Site is higher than 1×10^{-4} and is due primarily to TCE.

Proposed Plan, p. 9, AR301889 (emphasis added). Thus, the only justification EPA asserts for taking action at the site is because the excess cancer risk posed by contaminated groundwater at the site exceeds 10^{-4}. As noted above, this fact is irrelevant to the selection of a remedial alternative for OU1, because the risk from exposure to groundwater is being addressed under OU3.

Absent consideration of the groundwater, the excess cancer risk and non-carcinogenic risk presented by the Site is sufficiently low, especially in juxtaposition with background risk levels, so as to warrant selection of the No Action Alternative. The No Action Alterative is additionally supported by the findings of the RI that both the percentage of samples in which contaminants are detected and the average concentrations of those contaminants have declined markedly in the surface and subsurface soil at the site since 1986. EPA does not suggest that this trend will not continue, further lowering the risk posed by the site without the expenditure of millions of dollars.

For all of the above reasons, Raymark believes that the selection by EPA of Alternative 6 or any alternative other than the No Action Alternative would be arbitrary and capricious and inconsistent with the NCP. In any event, because the site conditions that have prompted the Proposed Plan were known by EPA or could reasonably have been inferred from data available to EPA

prior to the execution of the Consent Decree, Raymark is not liable for further response costs at the site.

Respectfully submitted,

Brendan K. Collins

BKC:mrm

cc: Mr. Derek R. Evans
Mr. Bradley C. Smith
Mr. Robert R. Moody
James D. Coleman, Esquire
David G. Mandelbaum, Esquire